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In the Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA, PETITIONER

v.

ROSE WONG

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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The Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App. A, *infra*, p. 1a) is not yet reported.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, p. 6a) was entered on September 23, 1974. On October 23, 1974, Mr. Justice Douglas extended the time to petition for a writ of certiorari to and including November 22, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a "putative defendant" called as a grand jury witness is entitled to be warned prior to testifying of her "right to remain silent."

2. Whether the government's failure to give an adequate warning to a prospective defendant should result in the suppression of her testimony in a subsequent prosecution for perjury.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

1. The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person * * * shall be compelled in any criminal case to be a witness against himself * * *.

2. 18 U.S.C. 1623 provides in pertinent part:

> (a) Whoever under oath in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration * * * shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

On September 7, 1973, respondent testified before a grand jury for the Northern District of California. Her testimony was part of an investigation to discover violations of 18 U.S.C. 1955 (illegal gambling businesses) and 18 U.S.C. 1511 (obstruction of state and local law enforcement). Prior to testifying, respondent was warned by the prosecutor (R. 51–54):[1]

[1] "R." designates the record on appeal in the Ninth Circuit. "Tr." designates the transcript of the hearings on respondent's motion to suppress her grand jury testimony.

> You * * * need not answer any question which you feel may incriminate you. * * * [Y]ou [have] the right to refuse to answer any question which you feel might incriminate you. * * * [I]f you do give an answer, that answer may be used against you in a subsequent criminal prosecution, if in fact the Government should decide to prosecute you for any crime. * * * You also have the right to consult with an attorney prior to answering any question here today. * * * [I]f you cannot afford an attorney, * * * we would see that an attorney is afforded [sic] to represent you. * * * [I]f you do answer any questions and should you knowingly give any false testimony, or false answers to any questions, you would be subject to prosecution for the crime of perjury under the Federal Laws.

Respondent indicated that she understood each of these warnings. The prosecutor then carefully explained to her the meaning of perjury (R. 53–54):

> Q. * * * [I]n essence, perjury means telling a lie under oath. Do you understand what that is?
>
> A. Yes.
>
> Q. Do you understand the difference between lying and telling the truth?
>
> A. Yes.
>
> Q. Under oath?
>
> A. Uh huh.
>
> * * * * *
>
> Q. With respect to perjury, as we have discussed it, let me advise you that the Federal crime of perjury, before a Grand Jury, carries a penalty of five years imprisonment. That is a maximum penalty and/or $10,000 fine.

Following these warnings, respondent was asked if she had ever given money or gifts to any police officers and if she had ever met with police officers to discuss gambling. She denied that she had engaged in any such activities. (R. 63–64). At the time she was asked these questions, the govenment had evidence that she had paid bribes to certain police officers, who had turned the money over to the Federal Bureau of Investigation. The questioning was designed to elicit names of any officers who had not cooperated with the government, and who would therefore be indictable (Tr. 97).

On November 29, 1973, respondent was indicted for perjury, in violation of 18 U.S.C. 1623, on the basis of her September 7, 1973, denials to the grand jury that she had ever given money or gifts to any police officers or discussed gambling with them (R. 63–64). On January 22, 1974, respondent filed a motion to dismiss the indictment, in which she alleged, *inter alia,* that the indictment was invalid because the testimony on which it was based was obtained without her having been effectively advised of her Fifth Amendment rights. On February 8, 1974, following an evidentiary hearing on her motion, the district court ruled that, although she had been given "a full, complete and adequate warning" of her privilege against self-incrimination prior to testifying, her grand jury testimony must be suppressed because her lack of proficiency in the English language prevented her from understanding the warning (Tr. 110). This ruling was issued from the bench, and the court made no written findings of fact. It stated, however, that

respondent had understood what perjury meant (Tr. 110) and had clearly understood the substantive questions asked of her (Tr. 98–99).[2]

The court of appeals affirmed, reasoning that "[t]he perjurious answers were induced by an unfair procedure violative of the [Due Process Clause of the Fifth Amendment]" (App. A, *infra,* p. 2a). The unfairness stemmed, according to the court, from the government's failure effectively to warn a witness whom the government knew to be a prospective defendant of her "right to remain silent," thereby creating a "substantial danger" that she would feel compelled to choose between self-incrimination and perjury. The court acknowledged that the government had provided respondent with all the warning to which she was entitled and stressed that it had found no "bad faith" on the part of the government. "Nevertheless, the government having employed a procedure calculated to exploit her lack of understanding, it runs the risk of a subsequent determination that its curative procedures were inadequate and the due process violation undissipated" (App. A, *infra,* p. 5a, n. 4). The court agreed with the ruling of the district court that respondent's testimony was therefore inadmissible in a subsequent perjury prosecution.[3]

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[2] The district court made no ruling on respondent's motion to dismiss the indictment.

[3] The court relied upon *United States* v. *Mandujano*, 496 F. 2d 1050 (C.A. 5), and its companion case, *United States* v. *Rangel*, 496 F. 2d 1059 (C.A. 5). On October 16, 1974, the Fifth Circuit denied the government's motion for a rehearing *en banc* in those two cases. On November 12, 1974, Mr. Justice Powell extended the time for the United States to petition for a writ of certiorari in those cases to and including December 15, 1974.

REASONS FOR GRANTING THE WRIT

This case presents two important and related questions concerning procedures for questioning grand jury witnesses and remedies for the government's failure to follow any procedures that may be held to be required. The first question, over which the circuits are in conflict, is whether a grand jury witness suspected of participating in the substantive offense must, prior to testifying, be given an effective warning of her "right to remain silent." The second question, in connection with which it is assumed that some warning is constitutionally required, and over which the opinion of the court below is in conflict with decisions of several circuits and with decisions of this Court, is whether the government's failure to give an adequate warning should result in the suppression of a "putative defendant's" testimony in a subsequent prosecution for perjury.

In giving affirmative answers to these two questions, the court of appeals in the instant case needlessly impeded the investigative power of the grand jury, which "must be broad if its public responsibility is adequately to be discharged." *United States* v. *Calandra*, 414 U.S. 338, 344. It also adopted an unduly expansive notion of the content of the due process and self-incrimination provisions of the Fifth Amendment, which do not require the giving of a warning appropriate to police interrogation in the grand jury context and do not in any event permit a witness who receives an inadequate warning to lie to the grand jury with impunity.

1. In holding that the Due Process Clause of the Fifth Amendment requires that a so-called "putative defendant" be given, prior to grand jury questioning, an effective warning of her "right to remain silent."[4] the court of appeals carved out an unwarranted exception to the well-established rule that grand jury witnesses need not be given *Miranda* warnings prior to testifying, even when their responses might tend to incriminate them.[5] The court relied upon the reasoning of the Fifth Circuit in the companion cases of *United States* v. *Manduj no, supra,* and *United States* v. *Rangel, supra,* both of which distinguished a "putative defendant" from an ordinary grand jury witness and held that the former is entitled to *Miranda*

[4] The court of appeals' allusion to a "right to remain silent," possibly based on analogy to *Miranda*, is an inaccurate statement of the Fifth Amendment privilege of a witness appearing before a grand jury, who has no "right to remain silent" *per se*, but only a right to claim his Fifth Amendment privilege with respect to responses which he has reasonable grounds for believing may tend to incriminate him. See *United States* v. *Monia*, 317 U.S. 424, 427. We assume, however, that the decision below did not turn upon any distinction between an absolute right of silence and the more limited privilege against self-incrimination granted by the Fifth Amendment, and that the court of appeals would have found no unfairness had it been established that respondent understood the Fifth Amendment privilege.

[5] See *e.g.*, *United States* v. *Scully*, 225 F. 2d 113, 116 (C.A. 2), certiorari denied, 350 U.S. 897; *United States* v. *Corallo*, 413 F. 2d 1306 (C.A. 2), certiorari denied, 396 U.S. 958; *United States* v. *Di Michele*, 375 F. 2d 959 (C.A. 3), certiorari denied, 389 U.S. 838; *Robinson* v. *United States*, 401 F. 2d 248, 250 (C.A. 9). See also *Commonwealth of Pennsylvania* v. *Columbia Investment Corp., et al.*, No. 162, decided September 5, 1974 (Pa. Sup. Ct.).

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warnings before testifying.[6] We submit that this distinction is warranted by neither precedent nor logic, and that no grand jury witness—including "one on whom the grand jury investigation has focused"—is entitled, prior to testifying, to a warning of a right to remain silent.

The Fifth Amendment speaks of compulsion. "It does not preclude a [grand jury] witness from testifying voluntarily in matters which may incriminate him." *United States* v. *Monia,* 317 U.S. 424, 427. Voluntariness is, of course, an elusive concept for which no single formula or factor, such as failure to advise of rights, is determinative. See *Schneckloth* v. *Bustamonte,* 412 U.S. 218, 226, 234. A witness who testifies before a grand jury may invoke the Fifth Amendment privilege if the witness has reasonable grounds for believing that truthful responses will tend to be incriminating. *Counselman* v. *Hitchcock,* 142 U.S. 547. However, "he must claim [the privilege] or he will not be considered to have been 'compelled' within the meaning of the Amendment," *United States* v. *Monia, supra,* 317 U.S. at 427, even if the witness

[6] The Sixth Circuit has suggested that it would subscribe to the same distinction for purposes of requiring warnings. See *United States* v. *Luxenberg*, 374 F. 2d 241, 246 (C.A. 6); *Stanley* v. *United States*, 245 F. 2d 427, 434 (C.A. 6). In no case, however, has the Sixth Circuit intimated that any blanket "right to remain silent" should apply to a "putative defendant" before the grand jury. See n. 4, *supra.*

The District of Columbia Court of Appeals has recently held that a "putative defendant" must be given *Miranda* warnings before appearing in the grand jury room for questioning and must also be informed that he is considered to be a "putative defendant." *United States* v. *Washington*, No. 7609, decided November 6, 1974, slip op. at 1–4. (D.C. Ct. App.).

was not specifically informed of the right to invoke the privilege.[7]

We perceive no reason in logic or experience for assuming that respondent's answers before the grand jury were less *voluntary* because she was suspected of involvement in the criminal enterprise under investigation than would have been the responses of any other witness. A so-called "putative defendant" may, like any other witness, claim the Fifth Amendment privilege as an alternative to self-incrimination. The greater likelihood that one suspected of having taken part in the offenses that the grand jury is investigating will give responses that may be incriminating does not affect the voluntariness of the responses.

Nor is the position of a so-called "putative defendant" before the grand jury analogous to the situation of an accused during custodial police interrogation. The *Miranda* warnings were designed to assure that the right not to be subjected to *compelled* self-incrimination was protected in custodial settings, which are essentially solitary, and which the Court found to be inherently coercive and difficult to supervise by neutral authority. The critical concern of the Court was with the dangers inherent in "incommunicado" interrogation. *Miranda* v. *Arizona,* 384 U.S. 436, 445. The warnings were never intended to "create a constitutional straightjacket" (*id.* at 467) to be applied across-the-board to every form of official interrogation. They are inappropriate to a grand jury setting, where questioning takes place before 23 private citizens, under the supervision of a

[7] See cases cited at n. 5, *supra.*

presiding judge, and where, if the time scheduled for a witness's appearance is inconvenient, it can generally be altered. See *United States* v. *Dionisio,* 410 U.S. 1.

Nor, finally, can it be assumed that the government's primary motive in summoning a potential defendant before a grand jury is, as the court below suggested, to gain unfair advantage over the witness arising from "the wholly predictable fact that the witness will be ignorant of or not understand the right to remain silent, and be compelled by answering to subject himself to criminal liability" for the substantive offense or for perjury (App. A, *infra,* p. 5a). On the contrary, a witness who is suspected of having taken part in the substantive offenses into which the grand jury is inquiring is likely to represent one of the best sources of information critical to the grand jury's inquiry as to whether a crime has been committed and, if so, the identity of others who may be involved. In the instant case, for example, respondent could have been helpful to the grand jury in determining who, if anyone, was involved in illegal gambling and police bribery. Alternatively, such a witness may wish to confess his or her part in the offense (the Constitution reflects no policy against voluntary confessions), or may be able to exculpate himself or herself to the satisfaction of the grand jury. Contrary to the conclusion of the court of appeals, we fail to see what is unfair to the witness in governmental efforts to elicit relevant information in the possession of the witness by normal grand jury questioning, provided that there has been no improper compulsion of testimony.

The court of appeals' blanket requirement that every witness likely to be indicted by a grand jury be warned of the "right to remain slient" prior to testifying would tend to discourage the cooperation that is necessary for the grand jury to determine whether criminal proceedings should be instituted against any person. It could place an unwarranted stumbling block in the way of the grand jury's investigation, predicated upon difficult forecasts about who is apt to be indicted. As this Court stated in *Blair* v. *United States,* 250 U.S. 273, 282, "the scope of [the grand jury's] inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation."

2. In holding that testimony of a "putative defendant" given without prior effective warning of the right to remain silent is inadmissible in a subsequent prosecution for perjury, the court of appeals created an exception to the well-established rule that "the immunity afforded by the constitutional guarantee [against compulsory self-incrimination] relates to the past and does not endow the person who testifies with a license to commit perjury." *Glickstein* v. *United States,* 222 U.S. 139, 142; see also *Harris* v. *New York,* 401 U.S. 222, 225; *Bryson* v. *United States,* 396 U.S. 64; *United States* v. *Knox,* 396 U.S. 77. In so doing, the court also brought itself into sharp conflict with decisions of the Second, Seventh, and Tenth Circuits,[8] which have held that even if putative de-

[8] *United States* v. *Winter,* 348 F. 2d 204 (C.A. 2), certiorari denied, 382 U.S. 955; *United States* v. *Parker,* 244 F. 2d 943 (C.A. 7); *United States* v. *DiGiovanni,* 397 F. 2d 409, 412 (C.A. 7), certiorari denied, 393 U.S. 924; *United States* v. *Nickels,* No. 74–1153, decided September 12, 1974 (C.A. 7); *Cargill*

fendants are entitled to some *Miranda* warnings, failure to give the warnings does not license them to commit perjury.

If a witness is improperly compelled to incriminate himself, his incriminating statements may be excluded from use by the prosecution. But he may not avoid the compulsion by committing perjury. "Our legal system provides methods for challenging the Government's right to ask questions—lying is not one of them." *Bryson* v. *United States*, 396 U.S. 64, 72. The court of appeals in the instant case, however, again relying upon the reasoning of the Fifth Circuit in *United States* v. *Mandujano, supra,* found this broad principle inapplicable to a "putative defendant" who lies to a grand jury, since "the government's use of such a procedure against a witness it knows to be virtually in the position of a defendant is unfair" (App. A, *infra,* p. 3a).

In *Mandujano,* which did not allude to the *Knox-Bryson-Harris* line of authority, the court's finding of "unfairness" was based upon an inference that the government's primary purpose for asking a "putative defendant" incriminating questions was to "entrap" him into committing perjury. As we have already indicated, however, the government has many legitimate purposes for asking a witness, suspected of taking part in the criminal activities, questions to which

v. *United States*, 381 F. 2d (C.A. 10), certiorari denied, 389 U.S. 1041; *United States* v. *Pommerening*, 500 F. 2d 92 (C.A. 10). See also *United States* v. *Andrews*, 370 F. Supp. 365, 371 (D. Conn.).

truthful responses may tend to be incriminating. See p. 10, *supra.*[9]

Moreover, a "putative defendant" who lies to a grand jury rather than incriminate himself cannot be considered to be "entrapped" into committing perjury, as the concept of entrapment has been articulated by this Court. The government does not implant the design to commit perjury in the mind of such a witness. See *United States* v. *Russell,* 411 U.S. 423, 436. Nor does the government thwart whatever predisposition to tell the truth the witness may have. See *Sorrells* v. *United States,* 287 U.S. 435; *Sherman* v. *United States,* 356 U.S. 369.

Even if such questioning without adequate warning were "unfair,"[10] however, it does not follow that the resulting testimony should be inadmissible in a prosecution for perjury. The exclusionary rule is generally "restricted to those areas where its remedial objectives

[9] The government's questioning of a witness suspected of having taken part in a criminal offense is different from the abuse of process resulting from repeated summoning of a witness before a tribunal, or summoning a witness even once before a tribunal without jurisdiction to conduct the inquiry, where such action is apparently designed to maximize the opportunity for perjury. See *Brown* v. *United States*, 245 F. 2d 549, 555 (C.A. 8); *United States* v. *Thayer*, 214 F. Supp. 929 (D. Colo.); *United States* v. *Cross*, 170 F. Supp. 303 (D.D.C.); *United States* v. *Icardi*, 140 F. Supp. 383 (D.D.C.); *United States* v. *Fruchtman*, 282 F. Supp. 534 (N.D. Ohio).

[10] Of course, if the court of appeals' somewhat unusual application of due process notions in this case were correct, then the failure to apprise the subject of a proposed consent search of the Fourth Amendment right to refuse consent would similarly be unfair, the use of evidence obtained pursuant to such a search impermissible under due process notions, and this Court's decision in *Schneckloth* v. *Bustamonte*, *supra*, erroneous.

are thought most efficaciously served." *United States* v. *Calandra, supra,* 414 U.S. at 348. Assuming that some prior warning is required, it seems to us unlikely as an empirical matter that prosecutors would risk losing the use of confessions or other incriminating evidence for the sake of obtaining evidence of perjury.

Indeed, in the instant case the government provided respondent with all the warnings to which the court held she was entitled. The court of appeals found no indication that the government had acted in bad faith. Respondent's testimony was suppressed because of a factor over which the government had no control—her lack of understanding of the English language, which made the warnings ineffective. Under these circumstances in particular, when there is no showing of bad faith on the part of the government, suppression of the testimony from a subsequent prosecution for perjury serves no deterrent purpose whatsoever.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be granted.

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APPENDIX A

United States Court of Appeals for the Ninth Circuit
No. 74–1636

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT
v.
ROSE WONG, DEFENDANT-APPELLEE

September 23, 1974

Appeal from the United States District Court for the Northern District of California

OPINION

Before: KOELSCH and SNEED, *Circuit Judges,* and FIRTH,* *District Judge.*

KOELSCH, *Circuit Judge:*

Appellee was subpoenaed to testify before the Grand Jury investigating illegal gambling and police payoffs in the Chinatown area of San Francisco. At that time the government already possessed incriminating evidence against her; she was a target of the Grand Jury's investigation and likely to be indicted.[1]

*The Honorable Robert Firth, United States District Judge for the Central District of California, sitting by designation.

[1] At the hearing the government's attorney acknowledged, and the district court found, that before appellee was subpoenaed, the government possessed testimony of two cooperating undercover San Francisco police officers that they had visited appellee at her illegal gambling house, that she had paid them bribes, and arranged for future payments; she was therefore a prospective defendant when called to testify.

Immediately before questioning appellee, the district attorney informed her of her privilege against self-incrimination, and of the possible consequences of testifying falsely. He then asked questions, tailored by his previously obtained knowledge of appellee's criminal involvement, true answers to which would have been incriminating. Appellee's false answers formed the basis for a subsequent perjury indictment. 18 U.S.C. § 1623.

Following her arraignment on the charge, appellee moved to suppress her answers. The district court determined, based on extensive evidence adduced by affidavit and at a hearing, that appellee, who was born in China and uses English only as a second language, had not understood that portion of the prosecutor's questioning designed to inform her of her right to remain silent.[2] Consequently the district court, relying on *United States* v. *Rangel,* 365 F. Supp. 155 (W.D. Tex. 1973), and the implications of statements in our decision in *Robinson* v. *United States,* 401 F. 2d 248 (9th Cir. 1968), ordered the testimony suppressed. The government has appealed. We affirm.

We emphasize at the outset that affirmance is rested not on the self-incrimination clause, but rather on the due process clause of the Fifth Amendment. The prejurious answers were induced by an unfair procedure violative of the latter clause. That unfairness stems from the threat the procedure poses to the values protected by the privilege.

The government correctly points out that the privilege against self-incrimination does not afford a defense to a witness under compulsion who, rather than refusing to answer (or, if improperly compelled

[2] The district court's resolution of the conflicting evidence is not clearly erroneous, and we are bound by the determination that she did not understand her rights.

to answer, giving incriminating answers), gives false testimony. *E.g., United States* v. *Knox,* 396 U.S. 77 (1969); *Glickstein* v. *United States,* 222 U.S. 139 (1911); *Robinson* v. *United States, supra; United States* v. *Orta,* 253 F. 2d 312 (5th Cir. 1958); *United States* v. *Parker,* 244 F. 2d 943 (7th Cir. 1957). The reason is fundamental: "The immunity afforded by the Constitutional guaranty relates to the past, and does not endow the person who testifies with a license to commit perjury." *Glickstein, supra,* at 142. Because the judicial system is committed to interpreting the privilege against self-incrimination generously obviating totally the danger of oppressive governmental conduct both to those who remain silent and to those who unwillingly incriminate themselves because of improper governmental compulsion, the legal system reciprocally need not and cannot tolerate perjury. If a witness is improperly compelled to incriminate himself, he may do so and later be protected, but he may not avoid the object of the compulsion by perjury and be protected by the privilege (*United States* v. *Knox, supra,* at 82)—the judicial system cannot properly operate if it countenances the breach of trust implicit in that course. *See United States* v. *Orta, supra,* at 314–15.

But that principal is inapplicable to this matter. We cannot ignore the fact that the procedure employed by the goverment was fraught with the danger, if indeed not intended, of placing appellee in the position of either perjuring or incriminating herself. We agree with the Fifth Circuit that the government's use of such a procedure against a witness it knows to be virtually in the position of a defendant is unfair, unless accompanied by warnings which in fact apprise the witness of the right to remain silent and which thoroughly obviate the substantial danger created of

involuntary self-incrimination or perjury, and that the induced perjured testimony must be suppressed. *United States* v. *Rangel,* 496 F. 2d 1059 (5th Cir. 1974); *United States* v. *Mandujano,* 496 F. 2d 1050 (5th Cir. 1974). *See United States* v. *Kreps,* 349 F. Supp. 1049 (W.D. Wisc. 1972); *United States* v. *Fruchtman,* 282 F. Supp. 534 (N.D. Ohio 1968); *United States* v. *Thayer,* 214 F. Supp. 929 (D. Colo. 1963).

Unlike the situation with an ordinary witness,[3] the government knows in advance that when it subpoenas someone in appellee's position, a so-called "putative defendant," and asks directly incriminating questions, it is thereby placing the witness in a dangerous dilemma. The imposing ex parte nature of grand jury inquisitions, coupled with the predictable ignorance of many lay witnesses about the intricacies of the privilege against self-incrimination, creates a foreseeable probability that the witness will subject himself to criminal liability. Subpoenaing and questioning a witness under such circumstances is a form of governmental compulsion seeking to incriminate a witness out of his own mouth which threatens to circumvent the independent prosecutorial model mandated by the privilege. We cannot ignore the obvious fact that, while a few witnesses placed in such a position might honestly wish to confess, in the great majority of cases asking incriminating questions of a putative defendant, were the witness fully informed of his rights, would be an idle task, as the witness would

[3] While *Rangel* and *Mandujano* are the only precedents directly in point, prior decisions refusing to suppress perjury have intimated that the result reached would be different if the questions had been asked of a putative defendant. *See, e.g., Robinson, supra,* at 230; *Orta, supra,* at 314; *Parker, supra,* at 946–49.

simply remain silent. The utility of the procedure to the government, and its inherent unfairness and danger, lies in the wholly predictable fact that the witness will be ignorant of or not understand the right to remain silent, and be compelled by answering to subject himself to criminal liability. The government should not engage in such a practice.

We do not hold that the government may not question a putative defendant. Some witnesses may indeed wish voluntarily to confess, and all may have non-privileged information useful to the grand jury's task—witnesses have no privilege per se to refrain from giving incriminatory information against others. But before such information can be compelled, the danger created by compelling answers to incriminatory questions from a putative defendant must be thoroughly obviated by an effective warning of the right to remain silent. As the warning given here was not effective,[4] because not understood, the unfairness of the procedure remained undissipated, and due process requires the testimony be suppressed.

The judgment is affirmed.

[4] We do not intimate that the government acted in bad faith. On the contrary, the government's attorney carefully informed appellee of her rights and believed she understood them. Nevertheless, the government having employed a procedure calculated to exploit her lack of understanding, it runs the risk of a subsequent determination that its curative procedures were inadequate and the due process violation undissipated.

APPENDIX B

United States Court of Appeals for the Ninth Circuit

No. 74-1636—DC #73-0765

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

ROSE WONG, DEFENDANT-APPELLEE

JUDGMENT

Appeal from the United States District Court for the Northern District of California.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this Cause be, and hereby is Affirmed.

Filed and entered September 23, 1974.

A True Copy Attest. November 7, 1974.

EMIL E. MELFI, Jr.,
Clerk.

By M. Turley
MARY TURLEY,
Deputy.

U. S. GOVERNMENT PRINTING OFFICE: 1974